Supreme Court, U.S.
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No. _____

OFFICE OF THE CLERK

In The

Supreme Court of the United States

JAMES G. MAHORNER, an individual, *Pro Se*,

Petitioner,

v.

GEORGE W. BUSH, JR., as President of the United States and individually,
and
PAUL H. O'NEILL, as Secretary of the Treasury and individually,

Respondents.

On Petition For *Writ Of Certiorari* To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR *WRIT OF CERTIORARI*

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10014

QUESTIONS PRESENTED FOR REVIEW

1. Do the early treatises, early Supreme Court cases, Constitutional debates, and early War of Nations meaning of "declare war" establish that Congress has the exclusive, undelegable power to initiate war against a foreign nation?

2. If there is no judicial relief available, does the right of self-defense against unconstitutional action (*The Federalist Papers*, 28) guarantee the governed civilian citizens the right of forcible response to unconstitutional action if it is causing the death of more such citizens than it is causing the death of armed forces members and other members of the governing class or is otherwise causing a threat of physical injury to them?

3. Does the unconstitutional initiating of war by an individual resulting in the death of many non-military citizens against the original stated intent that their blood not be shed by the decision of one individual but only by the judgment of the many Congressional members provide each such citizen with standing to oppose the unconstitutional action, make the issue justiciable, and make the issue non-political?

4. If judicial relief is denied on the basis of lack of standing, lack of justiciability, or the issue is political, does the threat of retaliatory death to the governed citizens (threat evidenced by the government's need for the shelters) and their exclusion from the shelters built by and designated for the safety of the governing class give to the individual the right of forcible opposition to a president acting *ex-cathedra* and unconstitutionally?

QUESTIONS PRESENTED FOR REVIEW – Continued

5. Does U.S. aid to the sovereign theocracy Israel's practice of the Religious Law of Right of Return, which rewards U.S. Christians and others who convert to Judaism with all the rights, privileges and protections of Israeli citizenship, violate the religious protection of Amendment I of the U.S. Constitution (compared with aid to sovereign Vatican used to provide a monetary reward to U.S. citizens who convert to Catholicism)? (Issue is mooted if Israel repeals the application of the Right of Return to U.S. citizens who convert.)

6. If there is no judicial alternative, what is the Constitutionally-permitted alternative to the citizens' constitutional right of self-defense against those who endanger them by unconstitutional actions?

7. Whether there was a substantial post-Revolutionary War fear among the people that the presidential office-holders would exercise those tyrannical powers previously forthcoming from the King of England, so as to render the inducement of the guarantee of the right of self-defense (*The Federalist Papers,* 28), and that the president would not have the King's power to initiate foreign wars (*The Federalist Papers,* 41 and 69) a substantial part of obtaining ratification of the U.S. Constitution, so as to cause a government removal of either such guarantees, enforced by judicial rejection of challenges to their removal, invalidate the instrument?

8. Would a well-developed legal science or law computer provide that the power to interpret does not include the power to re-interpret, so as to cause previous interpretations to be subject to change only by formal amendment of the U.S. Constitution?

QUESTIONS PRESENTED FOR REVIEW – Continued

9. Does the glory bestowed on the executive branch and its military by war create a conflict of interest rendering the executive without competence to objectively determine the need for war.

LIST OF PARTIES

Petitioner:

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Respondents:

George W. Bush, Jr. and Paul H. O'Neill, both individually and in their respective official capacities as President of the United States and Secretary of the Treasury.

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CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS

Mahorner v. Bush, et al., 224 F. Supp. 2d 48.

District Court Case No. 1:02CV01530. Opinion of the court was entered and published and is reproduced in full in the Appendix attached hereto.

Appellate decision was unpublished. Appeals Court Case No. 02-5335.

CONCISE STATEMENT FOR BASIS OF JURISDICTION

ORDER BEING SOUGHT TO REVIEW

The order being sought to review is from the United States Court of Appeals for the District of Columbia Circuit, Case No. 02-5335, and dated February 12, 2003. No rehearing was requested.

STATUTORY PROVISIONS

Jurisdiction lies with this court pursuant to 28 U.S.C. Section 1254(1), as follows:

> "Section 1254. Courts of appeals; certiorari; certified questions
>
> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

Review is sought pursuant to Supreme Court Rule 10(c).

Supreme Court Rule 10(c) states "review on a *writ of certiorari* will be granted only for compelling reasons, one of which is when a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court." Petitioner asserts that the question of whether the right to declare war rests solely with the U.S. Congress is one of paramount importance. Petitioner asserts that not only is this a federal constitutional law question that should be settled by this court, but one that can **only be settled by this Court**.

CONSTITUTIONAL PROVISIONS

Amendment I of the U.S. Constitution and Article I, Section 8, Clause 11 of the U.S. Constitution.

BASIS FOR FEDERAL JURISDICTION IN APPEALS CASE

The basis for federal jurisdiction asserted in the United States Court of Appeals for the District of Columbia Circuit case was 28 U.S.C. Sections 1331, 1361, 1651, 2201-2202.

NOTICE REQUIRED BY RULE 29.4(a)

Notification required under Supreme Court Rule 29.4(a) has been made.

CONCISE STATEMENT OF THE CASE

The case was initiated by a complaint filed in Federal District Court, District of Columbia, Washington, DC, pursuant to federal question jurisdiction (28 U.S.C. 1331) asserting the following:

1. Defendant, George W. Bush, was undertaking to initiate war against foreign countries in breach of the exclusive war power of Congress (U.S. Const., Article I, Section 8, Clause 11).

2. That such action was creating a substantial danger to Plaintiff and his governed class, who are and were excluded by force of arms from survival in fallout shelters when the expected retaliatory foreign action against the civilian population in this country was forthcoming (the danger being evidenced by the fact that casualties among U.S. civilians have been much greater in the last ten years than the casualties among the governing class, including the military).

3. That the aid being given to Israel increases the threat referenced above.

4. Hamilton stated in *The Federalist Papers 28* as an inducement to ratification of the U.S. Constitution, "If the representatives of the people betray their constituents, there is then no resource left but in the exertion of the original right of self-defense, which is paramount to all positive forms of government, and which against

the usurpation of the national rulers may be exerted with infinitely better prospect of success than against those of the rulers of an individual state."

5. That modern technology permits instant electronic voting by Congress on a declaration of war, even when not in session.

6. In order to further highlight the government's lack of care for the people's interest compared to its own interest, the complaint sets forth portions of the Massachusetts Institute of Technology publication, America's Ground Zero, that establishes the government exploded 125 hydrogen bombs above ground in this country, each of which has spread more radiation than was spread by Chernobyl, causing substantial health problems and death to the population that could have been avoided by conducting the tests in U.S. holdings in Antartica.

7. The complaint cites a media article about a mysterious truck shipment of radioactive material into this country from Canada, which detected radiation consistent with plutonium, the only material necessary for adversaries to construct and explode a small atomic bomb in the U.S., and such was not known to the U.S. government until 14 days after shipment, and has not been located by the government.

8. The complaint set forth that Plaintiff was a Christian; that Israel and Vatican are theocracies with sovereignty; that the location of Israel being designated by God as the homeland of Judaism and the Vatican being designated by Christ through his disciple Paul as being the homeland of Christianity, and that Israel has

codified God's Law of Return and through it, gives the right of immediate Israeli citizenship to those U.S. citizens who leave non-Jewish religions and convert to Judaism. Thus, the taxes of many U.S. citizens of many faiths are financing Judaism in this country, comparable to the Vatican using foreign monetary aid from this country to give a cash award to any U.S. citizen who converts to Catholicism.

9. The complaint requested a declaration that the Defendant violates the U.S. Constitution if he initiates war in a foreign country; an injunction against such conduct (as was given by this Court two centuries ago against certain presidential actions and was ignored by President Andrew Jackson), and a declaration that U.S. tax monies cannot be used to finance Israel, unless the Religious Law of the Right of Return is repealed as to its application to citizens of this country.

10. Plaintiff filed a Motion for Emergency Preliminary Injunction, which Defendants opposed. Plaintiff then filed a timely response to Defendants' opposition.

11. On September 16, 2002, the U.S. District Court for the District of Columbia entered its final order dismissing the matter and issued its Memorandum Opinion finding that Plaintiff had no standing, that the issue was non-justiciable, and on political question. For purposes of review, all facts set forth in the original case are to be true.

12. Plaintiff took timely appeal to the U.S. Court of Appeals, District of Columbia, and filed therein a Motion for Acceleration of Final Determination, which was opposed by Defendants. The

Appellate Court delayed the operation of the briefing rule by entering its order on October 28, 2002.

13. Plaintiff filed a response to the government's motion for summary affirmance, attaching thereto the 1817 Harper & Rowe publication The Genius of the People wherein it is stated that the delegates could scarcely conceive where else the power to commit the blood and treasury of the nation to war could be lodged except among the direct representatives of the people and of the states, and urged that inasmuch as war constituted no threat of loss of blood to officers of the government who had access to fallout shelters from which Plaintiff was excluded, that Plaintiff had unique, if not exclusive, standing to present the issue, which was unshared by the Congressmen who previously brought a similar suit because they had access to the fallout shelters.

14. The Appeals Court granted summary affirmance on February 12, 2003 and stated that such final order would not be published.

REASONS FOR ALLOWING THE WRIT

In a case decided in 1964, Petitioner representing Florida (one of two cases) stated to this court that the threat to humanity was not caused by the development of the physical sciences that built on the development accomplished by the preceding generation, but with the retardation of social sciences, such as law, which designated the previous generation reactionary and started anew, causing the threat to be at its highest level unchallenged by a well-developed mathematical form of law controlled by original

intent, precedent, and other legal principles. The court was informed that eventually individuals would own small atomic weapons and that if an impersonal non-mathematical decision was not forthcoming, this court would be overruled. (Argument in part involved violation of Amendment Clause by excluding southern senators for one day while proposing the Fourteenth Amendment).

Today's case presents an opportunity for this court that will not be forthcoming again for a substantial length of time and may then be too late to rule whether the lives of the people will be threatened by retaliatory action from a war initiated by declaration of the judgment after debate of the many government representatives or at the whim of one individual such as a previous president who had Addison's Disease at the time of a nuclear crisis, which disease substantially reduces the judgment ability of its victim. It contributed to the president's forgetting to cancel scheduled hydrogen bomb test, forgetting to cancel U2 flights over Russia and delaying making an agreement to remove U.S. missiles in Turkey which were the cause of Russia's action. The mistakes would not have been of such magnitude if the many minds of Congress were handling the problem and no government radiation shelters, some in Palm Beach area, had not been made available to all his family including cousins. This opportunity before the Court should not be rejected because of past concerns that the Court lacks war expertise. It has expertise equivalent to that in Congress and is only deciding whether Congress has exclusive power to initiate war.

The government, by its action of spending huge amounts of tax monies for current maintenance of fallout protection solely for its agents, has absolutely established that there exists a substantial threat of current retaliation

because of presidential war against foreign nations. This court can take judicial notice that the danger is so imminent that the fallout shelters for the judiciary (each branch having its own so that a successful attack on one shelter will not destroy those in another) is presently maintained at the highest level of preparedness, and that the security of such shelters is equally maintained so that should Petitioner or other members of the governed class undertake to enter with or without their children, they will be shot if necessary to maintain the security of the shelter. Government does not need the benefit of the judgment sought from this court by Petitioner. Its agents do not have standing. Standing is unique to the Petitioner-Plaintiff and those in his class who are denied access to the fallout shelters and other protections available to government agents.

The question is justiciable and not barred by the political question rule or the justiciable question. The right of self defense is preserved by the U.S. Constitution as stated and used as a guarantee that should the judiciary not give relief from unconstitutional action that creates or enhances the threat against the people, that individuals have the right to use force to remove the source of danger.

A judgment by this court finding that the U.S. Constitution permits the president to initiate wars against foreign countries causes the right of self defense as a legal remedy to cease. If there is no judgment by this court, an individual on trial for using the right will probably be entitled to a jury instruction as to whether the victim had the constitutional power to do the action in question and if the trial court that the victim did not, there will be a jury

instruction that should the jury find that the unconstitutional action endangered the defendant, the jury must acquit.

There is presented here the issues regarding justiciability, political question and standing, arguments such as the issues of self-defense, danger evidenced by current upkeep of fallout shelters, the exclusion of all non-governmental citizens from the shelters, and other factors that have never been ruled on by this court and have not been presented to any court until the filing by Petitioner. If the court declines to address the questions presented, there may arise within a few years the loss of life of many non-governmental citizens because of a cause that may have been removed by this court's determination of the constitutional right of the president to make war. Even if the court rules such power is in the president and the U.S. Constitution, there will be the benefit of removing from him the threat of constitutionally-guaranteed right of a citizen to use self-defense remedies to protect himself and his children from unconstitutional actions.

Petitioner asserts that the question of whether the right to declare war rests solely with the U.S. Congress is one of paramount importance. Petitioner asserts that not only is this a federal constitutional law question that should be settled by this court, but one that can **only be settled by this Court**. In early times this court, federal courts and state courts have stated that the power to initiate war is solely in the Congress without addressing later created doctrines of justiciable, standing and political question, even when applicable. In the case of *The Brig Amy Warwick*, 67 U.S. 635, 17 L. Ed. 459, this court ignored the modern bars of justiciability, political question and standing to rule, on behalf of ship owners threatened

with the loss of property enabled the court to address the presidential war powers. In the case of *Kiyoshi Hirabayashi v. U.S.*, 1943, 63 S.Ct. 1375, 320 U.S. 81, 87 L. Ed. 1774, this court ignored the bars to rule on the war power question on behalf of those who were losing their freedom, and in this case the question is raised by one threatened with loss of life by unconstitutional government action (note also *Marbury v. Madison*, 5 U.S. 107, 1 Cranch 137 (1803)) where Chief Justice Marshall ruled upon the potential political question of the power of President Adams to appoint judges at the end of his administration, which appointments Marshall acting as Secretary of State as well as Chief Justice of the Supreme Court had failed to timely deliver). The threat is evidenced by facts established by the complaint regarding the secret radiation shipment into this country from Canada, which was media published the day before the complaint was to be taken to Washington, D.C., for filing, resulting in an addition to the complaint. There was published in WorldLink satellite channel (where prominent scientists appeared) on Thursday, May 8, 2003 (the night before this petition is to go to the printers) that a nuclear explosion making uninhabitable lower Manhattan is a current possibility, and that an attack by foreign missiles of China or North Korea is a possibility within the next five years, which is a very short period of time to re-introduce Petitioner's question at the U.S. Supreme Court level. Should these threats occur, there is a present intent that Petitioner and his children would be forcibly excluded from the fallout shelters, and they will receive a dose of radiation which makes them ill for a couple of days and then suffer the inevitable and very painful radiation death, which will commence at the end of a comfortable two-week period. The government has indicated a present need to issue potassium iodide pills to

the population to render them less vulnerable to radiation poisoning from explosion of nuclear devices. Comparing the exposure of the population to the protections exclusively for government indicates that the issuance of cyanide pills would be more appropriate than the issuance of iodide pills. The members of this court will be fully protected by government because the danger is treated as imminent. Petitioner lives within two miles of a prime target, the Mayport Naval Air Station, from which departed the Kennedy and other powerful naval vessels used in recent and past foreign wars initiated by the president and which is to berth a nuclear powered aircraft carrier. Petitioner lives within one mile of the St. Johns River where many foreign ships with capability of having aboard undetectable nuclear devices pass continuously and which are not scanned by the government until they have traveled ten miles from Petitioner's home.

Israel can mute the religious question presented by making inapplicable its codified law of the Religious Law of Right of Return to U.S. citizens who convert to Judaism. The well-recognized superior nature of the many Jewish people who benefit from the Jewish law; the fact that Israel has many nuclear bombs made from a U.S. design, the fact that Israel has many of our most-sophisticated Apache helicopters (one used as recently as May 8, 2003 to destroy two Arab enemies), and the fact that Israel has the most advanced armed forces in the locale will result in a refusal to repeal the codified religious law. If aid from this country then ceases, the retribution that the U.S. has received on September 11th, caused by our support of Israel war against her neighbors and the initiating of war unconstitutionally by the president will cease should those causes be favorably addressed by this court.

The court members receive the only lifetime appointments within our government, solely so that there can be justice for the powerless without fear of adverse consequences to the Court. This court's protection was not forthcoming during the incarceration in un-air conditioned desert concentration work camps of the majority of Asian adults and children (even non-Japanese) during WWII with this court's support, and their homes taken for the inability to pay taxes during their slavery. The racism involved of placing the racially-identified Asians in work camps calculated to reduce their life expectancy, while leaving free the German and Italian Americans who had no racial identifications resulted in the American citizens who did not participate in the wrong being taxed to pay reparations to the survivors. The issues now before the court are similar. A popular president is with majority support acting *ex-cathedra* to initiate foreign wars in a manner which is in defiance of the original intent of the U.S. Constitution. This original intent was strongly recognized by Thomas Jefferson, who refused for a year to unconstitutionally respond to British kidnapping of our seamen until Congress constitutionally initiated the war of 1812.

Briefing is needed by each of the parties to fully develop what may be the most important issues of this century.

Respectfully submitted,

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United States Court of Appeals
For The District of Columbia Circuit

No. 02-5335 **September Term, 2002**
02cv01530

Filed On: Feb. 12, 2003

James G. Mahorner, an individual and a member of the governed class,
Appellant

v.

George W. Bush, Jr., *et al.*,
Appellees

BEFORE: Ginsburg, Chief Judge; Randolph and Tatel, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the response thereto, the reply, the motion to expedite, and the response thereto, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), *cert. denied*, 449 U.S. 994 (1980). The district court correctly held that appellant lacks standing to pursue his claims concerning the President's authority to wage war and the provision of foreign aid to Israel. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464 (1982). It is

FURTHER ORDERED that the motion to expedite be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41; D.C. Cir. Rule 41(b).

Per Curiam

/s/ [Illegible]
/s/ APR
/s/ [Illegible]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. **02-5335** September **Term, 2002**
District Ct. No. 1:02CV01530

James G. Mahorner, Appellant
v.
George W. Bush, Jr., et al., Appellees

ORDER

(Filed Oct. 28, 2002)

This case was filed and docketed on **10/28/02**.

It is **ORDERED** that appellant(s) shall submit the following document(s) (original and one copy required, unless otherwise noted) by the indicated date(s):

11/27/02	Docketing statement.
11/27/02	Two copies of the underlying decision.
11/27/02	Statement of issues to be raised.
11/27/02	Certificate of Counsel (Cir. R. 28(a)(1)).
11/27/02	Original and four copies of procedural motions which would affect the calendaring of this case.
12/12/02	Dispositive motions, if any. *See* Cir. R. 27(g). (Original and four copies.)

Appellant's failure to respond to a dispositive motion or comply with any order of the court, including this order, will result in dismissal on the appeal for lack of prosecution. See D.C. Cir. Rule 38.

It is **FURTHER ORDERED** that appellee(s) shall submit the following document(s) (original and one copy required, unless otherwise noted) by the indicated date(s):

11/27/02 Certificate of Counsel (Cir. R. 28(a)(1)).
11/27/02 Entry of Appearance form.
11/27/02 Original and four copies of procedural motions which would affect the calendaring of this case.
12/12/02 Dispositive motions, if any. *See* Cir. R. 27(g). (Original and four copies.)

It is **FURTHER ORDERED** that briefing in this case is deferred pending further order of the Court.

The Clerk is directed to send a copy of this order to appellant by certified mail, receipt return requested, and by first class mail.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/ Judy Pardue
Judy L. Pardue, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES G. MAHORNER, Plaintiff, v. GEORGE W. BUSH, President of the United States, et al., Defendants.	)	Civil Action No. 02-1530 (RBW)

MEMORANDUM OPINION

(Filed Sep. 16, 2002)

WALTON, District Judge.

This matter comes before the Court upon plaintiff's Motion for Emergency Preliminary Injunction, filed August 27, 2002, to enjoin defendant President George W. Bush ("President Bush") "from causing or engaging in further military action [in Iraq] without a Congressional declaration of war, except in an immediate response to launched missiles or other imminent or occurring attacks directed to the territory of this country, until a final hearing and determination on the merits in the above-entitled action." Motion for Emergency Preliminary Injunction ("Pl.'s Mot.") at 1. The plaintiff's underlying complaint requests that this Court: (1) issue a declaratory judgment that President Bush is unconstitutionally initiating war by ordering the United States military to attack countries without Congressional approval; (2) issue a declaratory judgment that the appropriation of funds to Israel by President Bush and defendant Secretary of the

Treasury Paul H. O'Neill ("Secretary O'Neill") violates Article I, Section 8, Clause 11 of the Constitution's Establishment Clause; (3) enjoin President Bush from attacking Iraq or any other foreign nation without a declaration of war from Congress; and (4) enjoin President Bush and Secretary O'Neill from giving additional aid to Israel. Complaint ("Compl.") at 17-18. Upon consideration of the applicable legal principles and for the reasons set forth below, this Court must dismiss this case *sua sponte* because the plaintiff's claims are non-justiciable, as he lacks standing to bring them and they present political questions.

I. Non-Justiciability of the Plaintiff's Complaint

It is a fundamental axiom that pursuant to Article III of the Constitution, federal courts are vested with the power of judicial review extending only to "Cases" and "Controversies." U.S. Const. art. III, § 2. As a result of the Constitution's "case-or-controversy requirement, the courts have developed a series of principles termed 'justiciability doctrines,' among which are standing[,] ripeness, mootness, and the political question doctrine." *National Treasury Employees Union v. United States,* 101 F.3d 1423, 1427 (D.C. Cir. 1996) (citing *Allen v. Wright,* 468 U.S. 737, 750 (1984)). An analysis of these "justiciable doctrines" reveals beyond all doubt that this Court lacks subject matter jurisdiction to entertain the plaintiff's complaint because he is unable to satisfy at least two of them, standing and the political question doctrine.[1]

[1] While arguably a distinct justiciable doctrine from standing, it is clear that the plaintiff's claims are also not ripe for review because, for

(Continued on following page)

(A) Standing

For a plaintiff to have Article III standing to bring a claim in federal court, the plaintiff bears the burden of establishing that he has suffered "an (1) 'injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical' – (2) which is 'fairly traceable' to the challenged act, and (3) 'likely' to be 'redressed by a favorable decision.'" *National Treasury Employees,* 101 F.3d at 1427 (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992)). The District of Columbia Circuit has explained that "[w]ith respect to the 'injury in fact' requirement . . . the injury alleged cannot be conjectural or hypothetical, remote, speculative, or abstract. Rather, it must be certainly impending." *Id.* (internal quotations and citations omitted).

(1) The Plaintiff's Requests for this Court to issue a Declaratory Judgment and Enjoin President Bush from Initiating Military Force in Foreign Countries

The plaintiff asserts that he has suffered an injury in fact because "[t]he action by the President of initiating war by . . . ordering [ ] military attacks against other countries with U.S. Armed Forces without Congressional authority, constitutes a major threat that Plaintiff will suffer loss of

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the same reasons standing bars the plaintiff from pursuing his claims, they are devoid of an impending injury in fact. *National Treasury Employees,* 101 F.3d at 1427 (citing *Duke Power Co. v. Carolina Envtl. Study Group,* 438 U.S. 59, 81 (1978); *DKT Mem'l Fund, Ltd. v. Agency for Int'l Dev.,* 887 F.2d 275, 297 (D.C. Cir. 1989)).

life in the response forthcoming from the country attacked . . ." Compl. at 15. Additionally, the plaintiff contends that such military action initiated by President Bush "has created a substantial threat to Plaintiff and others in Plaintiff's class of being vaporized by nuclear war . . ." Compl. at 3. Both positions fail to satisfy the injury in fact requirement necessary to establish standing. The plaintiff's allegation that he will suffer an increased chance of losing his life if President Bush initiates a military conflict with Iraq, amounts to nothing more than speculation about future events that may or may not occur. As the District of Columbia Circuit has stated, "[i]t is not enough . . . to assert that [the plaintiff] might suffer an injury in the future, or even that it is likely [he will] suffer an injury at some unknown future time. Such 'someday' injuries are insufficient." *J. Roderick MacArthur Found. v. FBI,* 102 F.3d 600, 606 (D.C. Cir. 1996).

(2) <u>The Plaintiff's Requests for this Court to issue a Declaratory Judgment and Enjoin President Bush and Secretary O'Neill from Sending Aid to Israel</u>

While the plaintiff does not directly assert that he has sustained an injury in fact as a result of the financial assistance the United States government provides to Israel, even assuming *arguendo* that he has, plaintiff's status as a taxpayer does not afford him standing to advance a challenge to the granting of foreign aid by the federal government. This Court's analysis of whether a taxpayer has standing to contest governmental action must begin with the Supreme Court's opinion in *Frothingham v. Mellon,* 262 U.S. 447 (1923). In *Frothingham,* a taxpayer brought suit against the Secretary of the Treasury

challenging the constitutionality of the Maternity Act of 1921. The plaintiff alleged that her injury was the burden of taxation arising from an unconstitutional statute that provided federal funds to the States to promote maternal and infant health. In rejecting the plaintiff's claim, the Supreme Court held that she lacked standing because her alleged injury, the tax burden, was "remote, fluctuating and uncertain." The Court explained that

> [t]he party who invokes the power [of judicial review] must be able to show not only that the statute is invalid but that [she] has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that [she] suffers some indefinite way in common with people generally.

Id. at 488. In *Flast v. Cohen,* 392 U.S. 83 (1968), the Court established a two-part test to determine taxpayer standing. First, the Court held that "a taxpayer will be a proper party to allege the unconstitutionality *only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution.*" *Id.* at 102 (emphasis added). Second, the Court concluded that the taxpayer must "show that the challenged enactment exceeds specific constitutional limitations upon the exercise of the taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8." *Id.* at 102-103. The *Flast* Court reaffirmed that the "case or controversy" aspect of Article III standing is not met "where a taxpayer seeks to employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System." *Id.* at 106. In this case, the plaintiff fails to meet the first prong of the *Flast* standing test, as he

does not challenge any act of Congress, but expenditures by the executive branch, and therefore this Court must dismiss his cause of action because courts have consistently held that challenges to actions by members of the Executive Branch by citizens solely on the basis of their status as taxpayers are not cognizable in the federal courts.

In *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.,* 454 U.S. 464 (1982), the Supreme Court, applying the *Flast* test, rejected the plaintiff's challenge to the transfer of federal property by the Secretary of Health, Education, and Welfare to a religious organization. The Court concluded that the plaintiff lacked standing because the "source of their complaint is not a congressional action, but a decision by [the Executive Branch] to transfer a parcel of federal property. *Flast* limited taxpayer standing to challenges directed 'only [at] exercises of congressional power.'" *Id.* at 479 (quoting *Flast,* 392 U.S. at 102).

The District of Columbia Circuit has also repeatedly held that "challenges to actions of the executive branch are not cognizable in a federal taxpayer action . . ." *Swomley v. Watt,* 526 F.Supp. 1271, 1274 (D.D.C. 1981) (citing *American Jewish Congress v. Vance,* 575 F.2d 939, 944 (D.C. Cir. 1978); *Public Citizen, Inc. v. Simon,* 539 F.2d 211, 216-17 (D.C. Cir. 1976)). In *American Jewish Congress,* the Circuit Court addressed a challenge by members of the American Jewish Congress seeking injunctive, declaratory and mandamus relief against several members of the President's Cabinet and other subordinate officials to prevent them from engaging in economic cooperation between the United States and Saudi Arabia. 575 F.2d 939. The Court held that the plaintiffs lacked standing on several grounds

to assert their claims. First, the plaintiff could not demonstrate that it had sustained an injury in fact. The only potential injury suffered by the plaintiff's members as citizens was the "general unconstitutional conduct of the defendants." *Id.* at 944. "However, the proper observance of constitutional limitations by government officials is an interest shared by all members of the American public. Any injury to that interest is necessarily abstract and lacking in the concreteness required to confer standing." *Id.* (citations omitted). In addition, applying the *Flast* test, the Court also concluded that the plaintiffs lacked standing as citizen taxpayers. The Court reiterated that to establish standing as a taxpayer "the plaintiff must be challenging a congressional action under the taxing and spending power of article I, section 8, of the Constitution, and must allege contravention of a specific limitation on that power." *Id.* (citing *Flast,* 392 U.S. at 102-03; *United States v. Richardson,* 418 U.S. 166, 175 (1974)). The Court held that the plaintiffs lacked standing as taxpayers because the only action they were challenging was that of executive officials engaged in economic cooperative programs with Saudi Arabia. *Id.* Thus, "[s]uch allegations falter in the first stage of the *Flast* test, because they are directed at executive action rather than at a congressional enactment under article I, section 8." *Id.* (citation omitted). Similarly, in *Public Citizen,* the District of Columbia Circuit rejected a challenge by the plaintiff that sought a judicial order that would require the Secretary of Treasury to recover all salaries paid to certain members of the White House staff who were devoting a significant amount of their time to the presidential election campaign. 539 F.2d 211. The Court noted that the *Flast* exception to the general rule that taxpayers lack standing is "a viability restricted to its express terms." *Id.* at 217. The *Public*

Citizen Court explained that judicial review over executive action "would place the judiciary in the role of management overseer of the Executive Branch. Such oversight is a function of Congress." *Id.*

(B) Political Question Doctrine

Not only does the plaintiff lack standing to bring this case, but the plaintiff's claims are clearly non-justiciable political questions. The Supreme Court has explained that a political question is a controversy in which there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it . . ." *Nixon v. United States,* 506 U.S. 224, 228 (1993) (quoting *Baker v. Carr,* 369 U.S. 186, 217 (1962)). Courts have developed through a long line of cases that matters involving foreign policy and military decisions are political in nature, and not within the province of the judicial branch. In *Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp.,* 333 U.S. 103, 111 (1948), the Supreme Court stated that

> the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither the aptitude, facilities nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

The conducting of military operations is considered to be "so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy,* 342 U.S. 580, 589 (1952) (citations omitted). The District of Columbia Circuit stated that

> [i]t is difficult to think of an area less suited for judicial action . . . The fundamental division of authority and power established by the Constitution precludes judges from overseeing the conduct of foreign policy or the use and disposition of military power; these matters are plainly the exclusive province of Congress and the Executive.

Luftig v. McNamara, 373 F.2d 664, 665-66 (D.C. Cir. 1967) (affirming a *sua sponte* dismissal by the district court of a complaint brought by a serviceman to enjoin the Secretary of Defense and the Secretary of the Army from sending him to Vietnam, in an action claiming that the military conflict in Vietnam was unconstitutional).

Although it is abundantly clear that the plaintiff's claims concerning the Executive Branch's ability to conduct both military and foreign affairs are non-justiciable political questions, the Court finds a discussion by the Fifth Circuit in *Dickson v. Ford,* 521 F.2d 234 (5th Cir. 1975) instructive.[2] In *Dickson,* the plaintiff brought a challenge as a taxpayer to the constitutionality of the Emergency Security Assistance Act of 1973 ("ESAA"), Pub.

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[2] Finding that the plaintiff's cause presented a nonjusticiable political question, the Fifth Circuit in *Dickson* declined to address whether the plaintiff's status as a taxpayer satisfied the *Flast* standing test for challenges of Congressional appropriations. 521 F.2d at 235.

Law 93-199, which provided financial aid to the military of the State of Israel. *Id.* In a strikingly similar argument to the plaintiff's position in this case, Dickson's complaint alleged that the State of Israel "was created by and is an instrument of the larger entity known as the Jewish People, and, hence, grants of foreign assistance by the United States to Israel are prohibited by the Establishment of Religion Clause of the First Amendment to the Constitution." *Id.* at 235. Commenting on the challenge to the ESAA, the Fifth Circuit observed that "[a]mong the areas which the courts have traditionally deemed to involve political questions is the conduct of foreign relations, which 'is committed by the Constitution to the executive and legislative 'the political' departments of the government . . .'" *Id.* at 236 (quoting *Oetjen v. Central Leather Co.,* 246 U.S. 297, 302 (1918)). Thus, the Fifth Circuit found that the plaintiff's

> challenge to the constitutionality of the Congressional Acts in question is a challenge to the power of the President and Congress to conduct the foreign affairs of the United States. Both the Congress and the President have determined that military and economic assistance to the State of Israel is necessary . . . [and] a determination of whether foreign aid to Israel is necessary . . . is a 'question uniquely demand[ing] [of a] single-voiced statement of the Government's views,' quoting *Baker,* 369 U.S. at 211 and a decision 'of a kind for which the Judiciary has neither aptitude, facilities nor responsibility . . .' quoting *Chicago & Southern Air Lines,* 333 U.S. at 111.

Id. This Court need not say anything more on the subject.

II. Conclusion

For the reasons set forth above, this Court will *sua sponte* dismiss the plaintiff's claims requesting injunctive relief to enjoin the President from using military force against Iraq and to prevent the President and the Secretary of the Treasury from sending financial aid to Israel because the plaintiff lacks standing to assert these claims and his claims present political questions not subject to judicial review. In *Luftig,* the District of Columbia Circuit, confronted with the challenge of this Court's *sua sponte* dismissal of the plaintiff's claim that the military conflict in Vietnam was unconstitutional, affirmed the finding that the plaintiff's allegation was a political question beyond the jurisdiction of the Court and stated that this

> proposition [is] so clear that no discussion or citation of authority is needed. The only purpose to be accomplished by saying this much on the subject is to make it clear to others comparably situated and similarly inclined that resort to the courts is futile, in addition to being wasteful of judicial time, for which there are urgent legitimate demands.

373 F.2d at 665-66. Echoing this Circuit Court's ruling in *Luftig,* this Court concludes that plaintiff's attempt to obtain relief from the courts is futile and it would be a waste of the Court's and the Executive Branch's time to further entertain plaintiff's claims. Accordingly, as was done in *Luftig,* this matter is dismissed *sua sponte* by the

Court because it does not present an Article III "Case" or "Controversy."[3]

SO ORDERED this 16th day of September, 2002.

/s/ Reggie B. Walton
REGGIE B. WALTON
United States
District Judge

[3] An Order consistent with the Court's ruling accompanies this Memorandum Opinion.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES G. MAHORNER, Plaintiff, v. GEORGE W. BUSH, President of the United States, et al., Defendants.	)	Civil Action No. 02-1530 (RBW)

ORDER

(Filed Sep. 16, 2002)

Upon consideration of the claims in the above-captioned cause of action, and for the reasons set forth in the Memorandum Opinion accompanying this Order, it is hereby,

ORDERED that the this cause of action is hereby **DISMISSED WITH PREJUDICE**.

SO ORDERED this 16th day of September, 2002.

/s/ Reggie B. Walton
REGGIE B. WALTON
United States District Judge

U.S. CONSTITUTION

Amendment I – Freedom of Religion, Press, Expression. Ratified 12/15/1791.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a *redress* of grievances.

U.S. CONSTITUTION

ARTICLE I, Section. 8.

* * *

Clause 11:
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

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28 U.S.C. Sec. 1331. – Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States

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28 U.S.C. Sec. 1361. – Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United

States or any agency thereof to perform a duty owed to the plaintiff

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28 U.S.C. Sec. 1651. – Writs

(a)

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

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28 U.S.C. Sec. 2201. – Creation of remedy

(a)

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section *505* or *1146* of title *11*, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b)

For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.

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28 U.S.C. Sec. 2202. - Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

THE GENIUS OF THE PEOPLE

CHARLES L. MEE, JR.

* * *

sons of history, would one day not only allow the buildup of an enormous military establishment, but be too timid or dishonest even to insist that it be efficient.

Then the delegates turned their attention to that ragtag bunch of civilians who served in their state militias. If some uniform standards of training and discipline were enforced, the country could have a citizens' military force to rely on rather than being solely dependent on a large standing army. (There was something wonderful in a citizens' army: If defense required their participation, and they refused to participate if a war seemed unmerited to them, that alone would provide a check on a too venturesome, or panicky, government.) Colonel Mason moved that Congress be empowered to make laws regulating the militias.

Madison suggested that the national government be entitled to appoint the general officers of the militias and the states appoint the lesser officers.

That, said Sherman, was "absolutely inadmissible." If the people were so far asleep as to allow their officers to be appointed by the national government, "every man of discernment would rouse them by sounding the alarm to

them." The people, or their local representatives, must be allowed to elect their own officers.

Gerry, evidently vibrating in every nerve, stuttered out his consternation. The convention, he said, was "pushing the experiment too far. Some people will support a plan of vigorous Government at every risk. Others of a more democratic cast will oppose it with equal determination. And a Civil war may be produced by the conflict."

But, said Madison, since the greatest danger to liberty came from a standing army, it only made sense to provide for a good militia, and to have it so organized that it could provide for the national defense – and with that argument the delegates finally agreed. They gave Congress the power to organize, arm, and discipline the militia, and to govern such parts of it as might be employed in the service of the national government. They reserved to the states the right to appoint their officers, but provided that they train the militias "according to the discipline prescribed by Congress."

And then, having provided a military force, Congress was given the ultimate power of state, the power to make war. It required little debate. The delegates could scarcely conceive where else the power to commit the blood and treasure of the nation in war could be lodged except among the direct representatives of the people and of the states.

Young Pinckney objected. He thought the proceedings of the house of representatives would be "too slow," that the house would be too numerous "for such deliberations," and that the power ought to be lodged solely in the senate. But Pinckney's colleague from South Carolina Pierce Butler thought that the same objection obtained with the senate as with the house, and that the president ought to

have the power to take the nation to war. The president, Butler was touchingly sure, would not commit the nation to war except when the nation would be content to support it.

Gerry was amazed. He had never expected "to hear in a republic," he said, "a motion to empower the Executive alone to declare war," to give to any single individual – one to whom the delegates would not even give the power to raise taxes or regulate interstate commerce – the power to put at risk thousands or millions of lives, or even the very existence of the nation.

Gerry and Madison had a more sensible suggestion to make. The house ought to be able to declare "war"; the president ought to have the power to repel "sudden attacks," though not to go on to wage war. Sherman agreed, and clarified the Madison-Gerry suggestion: "The executive should be able to repel and not to commence war."

Colonel Mason spelled out the delegates' concerns in even more detail. He was against "giving the power of war to the Executive," because he was not to be safely trusted with it. In general, said Mason, he was in favor of "clogging rather than facilitating war; but for facilitating peace." With this all the delegates could agree. And so the warmaking power was given to Congress, and to Congress was given the power to starve the military financially, to "clog" the warmaking power – should they have the courage and understanding to do so – and to keep the new nation from the habit of military ventures, which are always the death of a republic and its freedoms.

Finally, as they came to the end of their review of congressional powers, the delegates agreed to give Congress

the power "to make all laws necessary and proper for carrying into execu-

* * *

THE FEDERALIST PAPERS

No. 69

* * *

The President is to be the "commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He is to have power to grant reprieves and pardons for offenses against the United States, *except in cases of impeachment*; to recommend to the consideration of Congress such measures as he shall judge necessary and expedient; to convene on extraordinary occasions, both houses of the legislature, or either of them, and, in case of disagreement between them *with respect to the time of adjournment* to adjourn them to such time as he shall think proper; to take care that the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars, the power of the President will resemble equally that of the king of Great Britain and of the governor of New York. The most material points of difference are these: – *First*, the President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union. The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor. *Second*, the President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the

military and naval forces, as first general and admiral of the confederacy; while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies – all which, by the Constitution under consideration, would appertain to the legislature.*

* * *

* A writer in a Pennsylvania paper, under the signature of Tamony, has asserted that the king of Great Britain owes his prerogative as commander-in-chief to an annual mutiny bill. The truth is, on the contrary, that his prerogative in this respect is immemorial, and was only disputed "contrary to all reason and precedent," as Blackstone, vol. I, page 262, expresses it, by the Long Parliament of Charles I; but by the statute the 13th of Charles II, chap. 6; it was declared to be in the king alone, for that the sole supreme government and command of the militia within his Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength, ever was and is the undoubted right of his Majesty and his royal predecessors, kings and queens of England, and that both or either house of Parliament cannot nor ought to pretend to the same.

No. 41

* * *

Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing Confederation establishes this power in the most ample form.

* * *

No. 28

* * *

If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government, and which against the usurpations of the national rulers may be exerted with infinitely better prospect of success than against those of the rulers of an individual State. In a single State, if the persons intrusted with supreme power become usurpers, the different parcels, subdivisions, or districts of which it consists, having no distinct government in each, can take no regular measures for defense. The citizens must rush tumultuously to arms, without concert, without system, without resource; except in their courage and despair. The usurpers, clothed with the forms of legal authority, can too often crush the opposition in embryo. The smaller the extent of the territory, the more difficult will it be for the people to form a regular or systematic plan of opposition, and the more easy will it be to defeat their early efforts. Intelligence can be more speedily obtained of their preparations and movements, and the military force in the possession of the usurpers can be more rapidly directed against the part where the opposition has begun. In this situation there must be a peculiar coincidence of circumstances to insure success to the popular resistance.

* * *

District Court
Washington, District of Columbia

James G. Mahorner, an individual and a member of the governed class,
P. O. Box 50555
Jacksonville Beach, FL 3240 [sic]-0555,
904-249-0851

Plaintiff,

vs.

Civil Action No. 1:02CV01530
Honorable Reggie B. Walton

George W. Bush, Jr., as President of the United States of America, and individually,
1600 Pennsylvania Ave.
Washington, D.C.
and
PAUL H. O'NEILL, as Secretary of the Treasury of the United States of America, and individually,

Defendants.
_____/

Preliminary Statement

1. In this action, Plaintiff seeks declaratory and injunctive relief against the Defendant, GEORGE W. BUSH, JR., individually and as President of the United States, who is initiating war without Congressional approval, in violation of Article 1, Section 8, Clause 11 of the United States.

2. The Defendant, GEORGE W. BUSH, JR., individually and as President of the United States, and the Defendant, PAUL H. O'NEIL [sic], individually and as Secretary of the Treasury, are unconstitutionally enabling the theocracy Israel to be financed at a rate of Fourteen

Thousand Dollars per citizen with taxpayer money over a twenty-year period, in violation of the prohibition of establishment of a religion set forth in the First Amendment to the United States Constitution, and that the appropriations providing for such action is unconstitutional.

Because the courts and the rest of the population have been subject to continuous media bias as to issues set forth in this complaint, it is necessary to detail the true facts applicable to plaintiff's position. The nature of the bias is evidenced by the action of the media networks, which though competing for ratings, united together to make the Florida election close by selecting one analyst rather than an independent analyst for each, so as to more easily obtain a false prediction prior to the counting, sampling, analyzing and completion of the West Florida vote which was in the central time zone, and therefore incomplete. The results, as intended, made a clear election close by intentionally conveying to conservatives who had not voted that the election was over and their votes would be meaningless according to the single analyst the media had in conspiracy jointly selected. The bias is further demonstrated by the device of designating the politicians in the right as right wing to convey they are far from center and designate all on the left as leftists to convey that they are near the center, even though a basic education in high school geometry informs all that if the left wing moves farther right, and the right wing moves farther right, the center has moved farther right, and those who are left wing remain left and do not become leftist. (The bias factors have been further documented by the 2002 best-seller book *Bias*, which documents the resistance by the media to political diversity.) In reference to media deceptiveness

conduct, even the Washington Post on July 15, 2002, acknowledged that it was guilty of falsifying its corporate books in a manner similar to the non-media CEO's recently arrested.

Text references will be used to support facts urged, as was done by the United States Supreme Court in the school integration case of *Brown v. Board of Education*, Washington, D.C.

Standing and Justiciable Issue

By Defendant Bush initiating war in violation of Article I, Section 8, Clause 11 of the United States Constitution, Defendant Bush has created a substantial threat to Plaintiff and others in Plaintiff's class of being vaporized by nuclear war by Defendant's initiating war in violation of Article 1, Section 8, Clause 11 of the United States Constitution. Both Defendants have increased the threat of death to the governed class by violating the separation of church and state provisions under the First Amendment to the United States Constitution through the financing with federal tax monies, the theocracy of Judiasm known as Israel. The issue raised must be held to be justiciable because in creating the government by the Constitution, the governed class was promised as a constitutional right, the right to resist by force should the government act unconstitutionally, and there is no remedy available from the judicial branch. Hamilton, the most knowledgeable contributor to the federalist, promised as an inducement to ratification by the class to be governed stated that "if the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self defense, which is paramount to all

positive forms of government, and which against the usurpation of the national rulers, may be exerted with infinitely better prospect of success than against those of the rulers of an individual state." (Federalist XVIII, page 3 of document). By his guarantee of the right of self help to the governed class at the inducement for the ratification of the instrument creating the government, the individual citizen was to use self help if the absence of a justiciable issue prevents peaceful determination. This representation of Hamilton as to the inherent right of self defense against unconstitutional action was accepted without protest by the other members of the constitutional convention in order to prevent rejection by those who had won by revolution and the aid of private militias, freedom from the centralized government of King George and who greatly feared tyranny from the grant of great power to a centralized federal government.

Plaintiff is a moderate Christian member of the governed class. Defendants are members of the governing class, which have exclusive access to the only fall-out shelters sufficient to provide hope of survival in the event of nuclear war. Death squads have been assigned to shoot Plaintiff and others in Plaintiff's class should they seek a share of safety for themselves, their children or their grandchildren. The plaintiffs in the court case *Campbell v. Clinton*, (U.S. District Court for the District of Columbia, 1998) were Congressman who were also members of the governing class with exclusive access to the taxpayer-financed fall-out shelters and therefore lacked the standing of this Plaintiff and others in Plaintiff's class.

Jurisdiction

Jurisdiction lies under the Constitution of the United States, Article I, Section 8, Clause 11 and the First Amendment of the United States Constitution, and under 28 U.S.C. Sections 1331, 1361, 1651, 2201-2202.

Parties

Plaintiff is an individual and a member of the governed class threatened by the unconstitutional action of Defendants in initiating war and in supporting the taxpayer funding the religious theocratic government of Israel.

Injunctive relief is sought against Defendant George W. Bush, as President of the United States of America and also as an individual under the current judicial theory that an official using government power to initiate war and to finance church in an unconstitutional manner acts as an individual, which theory is often used to avoid immunity.

Injunctive relief is sought against Defendant O'Neill, as Treasurer of the United States of America, and as an individual who transacts appropriations to Israel, in violation of the U.S. Constitution provision prohibiting establishment of religion.

Constitutional Framework

Facts Regarding the Unconstitutional Initiating of War

The former President, William Clinton, was subjected to a complaint in this court for bypassing the exclusive,

non-delegable right of Congress to initiate war. The Constitutional provision, Article I, Section 8, Clause 11, specifies that the right to declare war is in Congress. Abraham Lincoln observed that if the President could attack another country without a declaration of war by Congress, as was done against the Mexican territories, the power of Congress became meaningingless and that clearly such presidential action was unconstitutional. Former President Clinton directed the attack on Yugoslavia. The current President and Defendant George W. Bush directed the attack on Afghanistan, even though he delayed sufficiently to give Congress ample time to give a declaration of war. He is now asserting that he will attack Iraq without a declaration of war. In the debates on the Constitution, war was considered the greatest threat to a new government because of the massive debt accumulated by such action. It was thus determined that though Parliament had no authority as to war and that King George was the unilateral source of war by England, that the President of this country would only have the authority to repulse invasion and not authority to pursue the invader, as provided in Article 2.

Modern technology permits instant vote by a quorum of Congressman so as to remove any excuse for not seeking a declaration of war, and furthermore presidential authority to repel invasion the instant foreign missiles are released removes the immediate need of a congressional declaration of war.

Hamilton stated that in order to obtain ratification *The Federalist*, No. LXIX, on page 3: "In most of these particulars, the power of the Presidnet will resemble equally that of the king of Great Britain [King George] and of the governor of New York. The most material points of

differences are these: First, The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union. The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor. Secondly, the President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the declaring of war and to raising and regulating of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature."

In the prologue of Carole Gallagher's book *American Ground Zero: The Secret Nuclear War*, published by the Massachusetts Institute of Technology, it is revealed that 126 hydrogen bombs were exploded by the government above ground, and that each of the bombs independently spread more radiation than was spread by Chernobyl. The map in the book shows where each state was hit that was west of those states bordering the Pacific. The government, in effect, prepared for war never waged by waging war on its own unprepared people. On page 23 of he prologue, there is reference to a top secret Atomic Energy Commission memo, admitted into evidence in federal court, which establishes that the government's position when deciding to do the test in this country rather than in

its territories at the South Pole used as an excuse to support and obtain the decision that the people living downwind of the Nevada test site during the atmospheric testing era, were "a low-use segment of the population."

On Sunday, August 4th, the night Tribune news service published that a mysterious shipment of radioactive material trucked across the Canadian/U.S. borders one week before government officials obtained knowledge was missing, and could be used for dirty bombs. There was no specific knowledge that the material was plutonium, which gives off radiation which would cause a similar reaction to that given by the border sensors, is not the substance being transported. Plutonium is the only substance difficult to obtain that is needed by thousands of knowledgeable people in this country for the simple construction and exploding of an atomic bomb by any one them. Books illustrating and making the construction and exploding of the bomb easy for the many knowledgeable individuals were readily available in the 1950's and 1960's. One of which was briefly scan read by Plaintiff. The half life of plutonium is 24,000 years, and there is no logical reason for not storing it in our South Pole territory, to render it less available to terrorists and far less harmful to the American people, as it is not only deadly as nuclear weapon, but is the most poisonous of all substances to which a person can be exposed.

Defendant Bush was shown on CNN on Friday, August 2, 2002 as stating in regards to the bombing at the Israeli University that: "I cannot stress strongly enough how [outraged] it makes me that people kill in the name of a false religion." This type of statement reduces Plaintiff's life expectancy as it intensifies a hatred that caused the loss of the September 11th Twin Towers (also caused in

party by environmentalists who prevented continued use of asbestos) and renders more likely an attack from Muslim countries who have previously when their religion was vilified by a Western author, offered a one million dollar reward on his life. This form of promoting a war environment can create a situation recognized by Abraham Lincoln wherein the Congressional right to declare war is bypassed by unconstitutional military actions by the President against other nations, so as to purposely produce a state of war without Congressional involvement.

Constitutional Framework

Facts Regarding the Unconstitutional Support of a Theocracy

Israel and Vatican are comparable theocracies with sovereignty. Israel is declared by the designation of God as the homeland for Judiasm (see attached encyclopedia references and attached *libretto* to the opera Nabucco by Verdi, which gives the Biblical references to Israel being designated by God as the homeland of Jews). The Vatican is designated by Christ through his disciple Paul as the home of Christianity. Israel, pursuant to God's designation and will, has codified God's law of the Right of Return (see attached copy of law), so as to give the right of immediate citizenship to U.S. citizens who leave non-Jewish religions and convert to Judaism. Thus, the Defendants are utilizing the taxes of the U.S. citizens of many religious faiths to finance Israel's promotion of Judaism in this country in a manner that is detrimental to other religions. Similarly, the Vatican in order to promote the Catholic religion in this country prohibited marriage to U.S. Catholics by non-Catholics, unless the non-Catholic converted to Catholicism. Similarly, each sovereign has an army (Vatican has

Palace Guards). Because the media, in spite of the terrorist Nazi-like nature of Israel, as shown by facts stated herein, has created a bias against the Vatican and in favor of Israel, it is therefore more persuasive and reduces the impact of media created by us to demonstrate that massive U.S. government-forced involuntary financial support of the Vatican would be a breach of the U.S. Constitution prohibition against the U.S. government favoring the establishment of a religion and that the material religious characteristics of Israel track those of the Vatican, and therefore forcing Christians to finance Israel is equally unconstitutional, so as to avoid the more direct attack on Israel and reduce the impact of the media-created bias.

The last major war was created by the left-wing national socialist worker's party of Germany, the German words of which are commonly abbreviated Nazi (see Nazi in pre-1946 unrevised dictionaries, and see pre-1950 unrevised *Mein Kampf* autobiography of Hitler, the last half of which is dedicated to and discusses Hitler's belief in left-wing socialism). Israel, similar to Germany, has a strong socialist party (designated by the synonym "Communist Party"). The major characteristics of Israel are identical to the Nazi characteristics material to the creation of World War II. First the Nazi's were anti-Semitic. Israel is currently the most anti-Semitic country in the world because Palestinians are Semitic as defined in the pre-1946 dictionaries prior to the subsequent attempted revisions. (The media has consistently concealed this fact.) Second, the Nazi air force, known as the Luftwaft, provided substantial superiority to forces of its neighbors, and the atomic bombs possessed by Israel provide a similar advantage. The Nazis expanded their territory three-fold while urging that such

expansion by invasion was defensive. Israel has similarly expanded her territory threefold by conquest and only recently has recanted the earlier excuse that such expansion was defensive. The nuclear power Israel, possessor of the ultimate weapon of mass destruction (possibly in violation of law similar to Iraq and Pakistan), whose borders have never been transgressed but who has invaded all her neighbors, as did Nazi Germany.

The Nazis branded as terrorists those who were blowing up cabarets in the territory occupied by Nazi invasion and in the original territory occupied by Germany as a resistance movement against the Nazi occupation. The Palestinians resisting Israel's occupation are similarly branded as terrorists. Third, the Nazis had ghettos to which Semitics known as Jews were committed. Israel had ghettos to which the Semitics known as Palestinians are confined. The socialistic nature of the Nazi practice of redistribution of the civil rights of Semitic Jews to equal opportunity for government employment (similar to the racist program in the U.S. as to the redistribution of the civil rights of the minority known as Caucasian men to the majority composed of the other gender and other races) is similar to the practice of Israel, which has a substantial socialistic movement, which has likewise redistributed property ownership and other civil rights of the Palestinian Semitic to the Jews. Israel, like the Nazis, had concentration camps for the unfavored Palestinian Semitic, the Nazis created a holocaust which, according to the Guinness Book of World Records in 1960 was the smallest of the three major holocaust therein noted being six million dead in comparison with the twenty million killed by the Socialist Republic (Russia) and the one hundred million killed by Red China, each of such three having been

created by left-wing socialist. Israel has created a holocaust in the camps of Shatila and Sabra, which is described by the prominent objective Jewish reporter of the New York Times Thomas Friedman in his book *From Beirut to Jerusalem*, for which he was awarded the Pulitzer Prize (see attached pages) describing the horror he witnessed as one of the first objective people to appear after the slaughter of the women, children and men who were prisoners in the camps. Perez Sharon [sic] was removed as Defense Minister due to his responsibility for the war crimes in these camps, which were substantially revealed by Thomas Friedman, who acknowledged the numbers of dead were not ascertainable because potentially many bodies had been shipped elsewhere. Israel has, within the last twelve months, done a similar slaughter and blocked the U.N. investigation in the Camp-town of Jenin. The total from these three camps is in excess of ten thousand by the Palestinian count, most of which were women and children and most of whom were prisoners.

Israel, although a friend to many of this countries' politicians, has been an enemy to the U.S., as is evidenced by the act of war against the U.S. ship Liberty in Egyptian waters, whereby Israel attempted to slaughter all on board and killed many through numerous air attacks during the brightness of noon, while an eighteen-foot American flag was flying at full mast. The purpose of the attack was to prevent the gathering of information, which would have verified the non-defensive highly aggressive nature of Israel's attack on the Golan Heights (see attached pages from the book, *The Liberty*). The leadership of the Israel supported Jewish Defense League was in November, 2001 indicted in California by the Justice Department for the crimes of conspiracy and attempt to kill an American

congressman and to blow up a California place of worship, each of which constitute acts of terrorism against this Country. Israel suborned espionage by paying the American citizen Pollard to illegally acquire and transmit to Israel secrets essential to our countries' security. Israel committed what the U.S. equates to an act of war against this country when done by Pakistan and India, such being the development and possession of weapons of mass destruction. Israel arranged over heavy objection by the U.S. to give Red China advanced technology that would have potentially enhanced that country's ability to vaporize the Plaintiff's class. The U.S. gives Israel $3.8 billion a year, as is established by the attached pages from the Washington, D.C. almanac and which is concealed in other almanacs by revised format of foreign aide, which lists the Far East rather than the individual countries that are listed in other parts of the world, as to the amount of foreign aide they receive from the U.S. This aide is the substantial cause of the September 11, 2001 attacks on this country by the victims of Israel. Other countries, including our allies in Europe, are not suffering similar attacks because they are not financially assisting Israel's war against her neighbors. The majority of UN members have branded Israel as racist (anti-Semitic) and have recognized that Israel, having been given birth by the UN, that her defiance of Article 2 of the UN charter which prohibits non-defensive aggression by other nations, is a substantial threat to that world peace which the charter provision was intended to protect.

The Plaintiff when before the United States Supreme Court in a case involving inter-racial marriage decided the year before *Love v. Love* on the same subject and in a case concerning right to counsel decided a year before Gideon

on the same subject informed the court that eventually individuals would own nuclear devices. The court was told by him that the threat to civilization was not the development in the physical sciences which in each generation built on the knowledge developed by the preceding generation, but was the retardation of the social sciences such as law, which branded as reactionary the wisdom of the preceding generations and started anew and whereunder courts instead of promoting the amending of the constitution as intended would unilaterally ignore the unanimous intent of the authors and those proposing the U.S. Constitution that due process was not adverse to prohibition against inter-racial marriages, because both races were excluded equally from such house (condition). While the use of the dicta in *Marbury v. Madison* (5 U.S. 137, 1803) as precedent in support of U.S. Supreme Court interpretation of constitutional provisions was perhaps questionable, such basic concept is reasonable, however, reason dictates that once a provision is interpreted by the U.S. Supreme Court, the meaning of such provision has been established and cannot be changed or overruled except by the amendment process, as otherwise the amendment process becomes totally unnecessary. The court was also informed that the original intent of the attorney provision in the Sixth Amendment in the U.S. Constitution was to overcome the English commonlaw, which restricted attorneys in criminal cases on the basis that they came between the jury and the truth and that inasmuch as the forefathers had intentionally provided, as a result of their debates, that any non-attorney, non-educated citizen was eligible to be Chief Justice or otherwise on the Supreme Court, and that to hold the citizen incapable of defending himself was not consistent with that original intent. It was stated that law as unscientifically practiced had failed in its major

purpose to enhance the ability of people to resolve disputes without violence as shown by the fact that the use of war and other violent means for the purpose of resolving disputes in the 20th century was as prevalent as its use for resolution of disputes in the preceding centuries. It was submitted that unless law became a highly developed science which controls court, government and people impartially throughout the world, individuals who possessed nuclear devices would effectively overrule the court's opinion as not being impartial, non-discriminatory nor mathematically sound under the established rules of jurisprudence. Both Einstein and Teller (developer of the advanced hydrogen bomb) concluded that only a well developed concept of rule by law could prevent the annihilation of humanity (see attached pages).

The theocracy problem can probably be removed by rendering the Law of Return inapplicable to United States' population and by ending any financing of the Jewish religion in this country by funds from Israel. The threat of war caused by supporting Israel can be removed by Israel's returning all territory taken by aggression in violation of Article 2 of the UN Charter, which will return her borders to that designated by its creator, the UN, and the United States giving full support by treaty and otherwise of the sanctities of such borders.

Irreparable Injury

Plaintiff has no adequate or complete remedy at law to redress the violations set forth herein. The action by the President of initiating war by the act of war, established by international law by the of ordering of military attacks against other countries with U.S. Armed Forces without

Congressional authority, constitutes a major threat that Plaintiff will suffer loss of life in the response forthcoming from the country attacked, without benefit of the shield given by those who proposed and offered the Constitution of having a multiple debate and a multiple member branch of government before making the declaration of war that would expose citizens excluded from the fall-out shelters to retaliation.

The Defendants Bush and O'Neill, in providing monies to Israel and the Appropriations Act portions which undertake to authorize those acts by the two Defendants herein, establish Judaism in this country by permitting the American-financed Israeli government to offer citizenship to non-Jews who covert to Judaism, while excluding those church members who do not convert.

First Cause of Action

Page two of the Federalist No. XLI authored by Madison, sets forth the question of "Is the power of declaring war necessary?" The answer is definite without any support for the negative. Yet, the Presidents have continuously usurped this power, so as to render it meaningless, and in doing so, have, in the atomic age, constructed a deep animosity in other countries for the American governing and governed class. This animosity will, as nuclear power develops, become a death knell for Plaintiff and others who are excluded from taxpayer-financed fall out shelters. Chief Justice John Marshall, in the Constitution of 1778, when the intent of the Constitution was well-known and could not be distorted by intellect, held, in the case of *Talbot v. Seeman*, 1 Cr (5 U.S.), 1, 28 (1801), that "The whole powers of war being, by the Constitution of the

United States, vested in Congress, the acts of that body alone can be resorted to as our guides in this inquiry."

Second Cause of Action

The financing of the theocracy Israel, a country built on religious principles comparable in strength to those applicable to the sovereignty known as the Vatican, constitutes an establishment of a religion in violation of the First Amendment of the U.S. Constitution, which is emphasized by the action of Israel in promoting defection from non-Jewish churches by giving to those in this country who will covert to Judaism the right to live in a territory where they will receive the benefit individually of in excess of Fourteen Thousand Dollars of American aide, and such action entwines this country in Israeli disputes, which have already resulted in substantial loss of the lives of citizens within her boundaries, while leaving the military untouched.

The actions of the Defendant injures Plaintiff in that it promotes a continuing threat of internal terrorism or of war as a result of financing the theocracy Israel.

No Jury Trial Demanded

No jury trial is being demanded herein.

Relief Sought

WHEREFORE, Plaintiff prays this Court enter an order as follows:

a. Declaring Defendant, Bush, is unconstitutionally initiating war by causing the Armed Forces of the United

States to attack countries without obtaining a declaration of war from Congress, who has the exclusive undelegatable authority.

b. Enjoining Defendant Bush from causing an attack on Iraq or any other foreign country without a declaration of war from Congress except in repelling an invasion that has commenced by the launching of foreign missiles or similar circumstances. Defendant Bush, having previously caused an attack on Afghanistan without a declaration of war, even though the time after the cause for the attack was sufficient to give Congress the ability to consider the matter and make a declaration of war, and Defendant Bush now threatens to attack Iraq in an equally unconstitutional manner, and

c. Declaring that the appropriation of U.S. taxpayer monies to Israel and the acts of the Defendants, Bush and O'Neill, pursuant to such appropriation, violates the Article I, Section 8, Clause 11 of the United Stats Constitution prohibiting the establishment of religion, and

d. This court is requested to quickly issue injunctions which will only be effective if no appeal is taken by the Defendants within the time permitted by law, or abbreviated in the injunction order, and

e. Enjoining Defendants from transmitting government money to the State of Israel, and

f. Granting such other and further relief as may be just and proper.

Conclusion

The action of the Defendants is unconstitutional, creates an unreasonable and unnecessary threat directly against Plaintiff, his children and his grandchildren, as well as other members of Plaintiff's class.

The non-traditional detail, though supportable in certain other civil rights complaints under existing judicial precedent, is necessary to show the magnitude of an immediate threat, and to bring such quickly to the attention of this nation's people. It is therefore requested that this complaint not be dismissed for reasons of form, and if the court finds substance herein, that it make an early ruling but delay the impact of such ruling if favorable to Plaintiff, so as to permit the attorneys for the Defendants to quickly file for an appeal with a condition that such filing immediately further stays the impact.

The reason for life-time appointment of federal judges is to enable them to do that which is legally correct under the basic constitutional law as interpreted by the founders without the judiciary having to fear removal by colleagues or other branches of government. The purpose was not served when America-Asian citizens, including men, women and children, were placed into American concentration work camps, which were unnecessarily placed in the desert and had no air conditioning. When we hung the Nazis, we told them their punishment was in spite of applicable German law because individual conscience should be the ultimate controlling factor. It is possible that

should be the controlling guideline in the consideration of this complaint.

Respectfully submitted,

/s/ JGM

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Mensa
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District Court
Washington, District of Columbia

James G. Mahorner, an individual and a member of the governed class,
P.O. Box 50555
Jacksonville Beach, FL
3240-0555,
904-249-0851

Civil Action No.
1:02CV01530
The Honorable
Reggie B. Walton

Plaintiff,

vs.

George W. Bush, Jr., as President of the United States of America, and individually,
1600 Pennsylvania Ave.
Washington, D.C.

and

PAUL H. O'NEILL, as Secretary of the Treasury of the United States of America, and individually,

Defendants. /

MOTION FOR EMERGENCY PRELIMINARY INJUNCTION

Plaintiff, **JAMES G. MAHORNER, *pro se***, hereby moves the court for a preliminary injunction, under the authority of Fed R Civ P Rule 65(a), enjoining Defendant, **GEORGE W. BUSH, JR.**, and all those in active concert or participation with said Defendant, from causing or engaging in further military action without a Congressional declaration of war, except in an immediate response to launched missiles or other imminent or occurring

attacks directed to the territory of this country, until a final hearing and determination of the merits in the above-entitled action.

Unless Defendant is restrained and enjoined by order of this court, Plaintiff, and others in the governed class, will suffer immediate and irreparable loss and damage through extensive nuclear radiation and biological defensive attacks against this nation by those nations that have suffered the unconstitutional act of the President acting like King George, by initiating war without declaration by Congress, as more fully described and set forth in the complaint filed herein. ("In most of these particulars, the power of the President will resemble equally that of the king of Great Britain [King George] and of the governor of New York. The most material points of differences are these: First, The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union. The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor. Secondly, the President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy, while that of the British king extends to the declaring of war and to raising and regulating of fleets and armies, all which, by the Constitution under consideration, would appertain to

the legislature." Hamilton). (A pre-war declaration of war was a requirement of international law at the time of the writing of the Constitution.)

Defendant's disdainful and unconstitutional initiation of war is motivated by political advantages received from such conduct and by the fact that Defendant, Bush, who has access to fall-out shelters, which include his own family, (Kennedy's family members were put in death squad fall-out shelters off the coast of Palm Beach County, Florida, during Condition Red and guarded by military from intrusion by the governed class attempts to save their own families), is immune to the potential massive radiation and biological response induced by the conduct.

As set forth in the complaint regarding Plaintiff's standing and the issue being justiciable, the authors, proponents, and ratifyers of the U.S. Constitution adopted the concept that if the tyranny of King George occurred in this country, and there was no resolution by the courts, then the doctrine of self-defense applied, which supported action by the governed class to remove the threat. ("If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self defense, which is paramount to all positive forms of government, and which against the usurpation of the national rulers, may be exerted with infinitely better prospect of success than against those of the rulers of an individual state." Hamilton)

It is illogical for the issue to be unsolvable in a declaratory action when the only method remaining to obtain a judicial ruling is that some hypothetical attorney, in defense of a hypothetical assassin, a portion of whose family has been killed by a response from a foreign nation

to the unconstitutional action of a President and who killed such president to prevent a completion of a new threat of the same nature, asks from the court for an instruction to the jury that the initiating of war by a President without declaration of Congress was illegal, and that should the jury find that such action was a substantial threat to the Defendant, the jury should acquit, as such solution was guaranteed by the Constitution when there was no judicial or other solution quickly available.

Because of the imminent magnitude of the threat to the present magnitude of the threat for extensive and imminent harm to the governed class, this court is requested to accelerate the hearing on this cause by ordering simultaneous submission of briefs from each side within ten (10) days of the date of the order, and to provide for a hearing of fifteen (15) minutes to each side, within fifteen (15) days of the date of the order, with the parties notified by phone and by fax of the order.

This Motion is made on the additional ground that Plaintiff has no other adequate remedy at law.

Prior to issuance of the injunction prayed for herein, Plaintiff is ready, willing and able to execute a bond payable to Defendant, or to provide other security in such sum as this court deems proper for such costs and damages, if any, as may be incurred or suffered by any party found to have been wrongfully enjoined or retrained. **It is further submitted that when a woman's life is threatened and a preliminary injunction by protective order is to be issued, protecting against the threat to life is deemed so great that bonds are not customarily required.**

As will be shown in the brief, the Constitutional debate included it was inappropriate that the wealth and blood of the nation depend on the decision of one man.

Dated this 20th day of August, 2002.

/s/_____

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UNITED STATES COURT OF APPEALS
District of Columbia Circuit

James G. Mahorner, an individual and a member of the governed class,
P.O Box 50555
Jacksonville Beach, FL
3240-0555,
904-249-0851

Plaintiff,

vs.

George W. Bush, Jr., as President of the United States of America, and individually,
1600 Pennsylvania Ave.
Washington, D.C.

and

PAUL H. O'NEILL, as Secretary of the Treasury of the United States of America, and individually,

Defendants. /

September Term, 2002
District No. 1:02CV01530

Appeals Court File No. 02-5335

MOTION FOR ACCELERATION OF FINAL DETERMINATION

Plaintiff, **JAMES G. MAHORNER, *pro se***, hereby moves the court to accelerate the appeal so that review can be sought early by either party in the United States Supreme Court for final determination of the issues or that such are unpresentable, and to remove that portion of the October 28, 2002 order prohibiting the filing by Plaintiff of an early brief, and as grounds therefore, sets forth the following:

1. The Affidavit filed by the independent contractor working for Plaintiff sustains that no notice of the docketing of the appellate statement was received by Plaintiff until November 19, 2002, and was not sent by the clerk's office at the earlier required time with a proper certified mail number, and the Order of this Court removing the right of Appellate to file right under the Appellant Rules to file an early brief causes concern that the case will not proceed expeditiously, so as to have influence on the President's intent to make a determination to send troops into a foreign country without a decision of Congress directing that war commence.

2. The early dismissal of this cause by the District Court so as to require the complaint's assertions to be taken as true, recognized the need to accelerate the cause.

3. Plaintiff's complaint asserts facts indicating danger that small nuclear devices (affecting four square miles or less for numerous years) will have if exploded in a major population area(s) in the U.S. within a week of an attack on Iraq, as set forth on pages 7 and 8 the complaint, which should be taken as true for purposes of the appeal.

4. Such facts as asserted by the media and pages 7 and 8 of the complaint are that the transportation and secreting of the radioactive material across the border in a manner that prevented federal knowledge for two weeks and has evidently not been located or identified as to its nature, as revealed by lack of follow up media reports and other assertions in the complaint, strongly indicate the probability of a nuclear device attack (small atomic explosion) within a short period of time after the president unconstitutionally initiates war by invasion of Iraq, when such power cannot be delegated to his whim or judgment

and can only be initiated by the undelegable judgment of the many members of Congress.

5. The independent contractor's Affidavit filed herein shows that Plaintiff's right under the Appellate Rules to file a brief immediately after the filing of the appellate record was delayed by occurrences in the Clerk's office and is now indefinitely delayed by the October 28, 2002 order of this court, and received by Plaintiff on November 19th.

6. As shown by the attached Motion for Emergency Injunction filed in the lower court, acceleration with substantial grounds was sought in the lower court, and such grounds continue.

Dated this ___ day of November, 2002.

/s/ _____

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UNITED STATES COURT OF APPEALS
District of Columbia Circuit

James G. Mahorner, an individual and a member of the governed class, P.O. Box 50555 Jacksonville Beach, FL 3240 [sic]-0555, 904-249-0851

Plaintiff,

vs.

George W. Bush, Jr., as President of the United States of America, and individually, 1600 Pennsylvania Ave. Washington, D.C. and **PAUL H. O'NEILL**, as Secretary of the Treasury of the United States of America, and individually,

Defendants. /

September Term, 2002
District No. 1:02CV01530

Appeals Court File No. 02-5335

STATEMENT OF ISSUES TO BE RAISED

1. Whether the intent of the U.S. Constitution, set forth in the Federalist, its debates, the early U.S. Supreme Court decision, and the practice of President Thomas Jefferson's restraint in not proceeding with the War of 1812, even though England was kidnapping our seamen from our ships until a declaration of war was obtained by Congress confirms regardless of later occurrences, after memory of intent had faded, that Congress has the sole undelegable right to initiate war by the judgment of its many members, and that the

initiation of war at the whim of an individual president is constitutionally *ex cathedra.*

2. Whether the standing of Plaintiff is greater than that of the ten congressman who brought a similar suit in this Circuit against then President William Clinton, and were found to be without standing, because Plaintiff, unlike the congressman, is excluded from the government fall-out shelters which offer the only hope of survival during a responsive nuclear attack from a President acting *ex cathedra* as an individual, initiating war by an attack on Red China (European embassy is under U.S. interpretation, international law, and a territorial part of the country to which it belongs). Plaintiff's standing is further emphasized by the fact that government death squads to shoot Plaintiff, should he attempt to obtain access to a fall-out shelter for the survival of himself or other descendants. Such death squads represent no threat to the ten congressman whose survival, as members of the governing class, drastically exceeds the importance of the survival of the governed class, although the congressman have little importance after the nuclear annihilation of the latter class.

3. Whether justiciability is provided by the Federalists, which sets forth as the inducement of the ratification of the U.S. Constitution, that should a member of the governing class act without authority in a manner that threatens the governed class, individuals of the governed class have a right of self-defense against such *ex cathedra* action, if there be available no timely (immediate) remedy available.

4. Whether while it is arguably established by President Andrew Jackson in the State of Georgia's Indian issue that the president can ignore the ruling of the Federal Judiciary, whether such fact does not remove the power of the judiciary to interpret the U.S.

Constitution, so as to afford a reduction in the threat to the citizen of future annihilation created by *ex cathedra* action. Furthermore, in the civil rights cases, the judiciary used the right to declare governor's action unconstitutional pursuant to the *ex cathedra* concept, even though the authority to do so was not otherwise available under the Eleventh Amendment of the U.S Constitution, prohibiting federal suits by citizens against states.

5. Whether because of similarities between the Vatican and Israel, such as each being a sovereign country, designated by God as the site of Catholicism and Judiasm, and each proslytizes other religions in the U.S. by insisting that their members convert to Catholicism to marry a Catholic, or convert to Judiasm to receive the automatic right of citizenship to return to Israel under the religious-state doctrine attached to the complaint, known as the Law of Return, would foreign aid of both religious sites be appropriate under the religious provisions of separation and anti-establishment set forth in the U.S. Constitution?

6. Whether standing as to the Israel issue is provided by Plaintiff being a member of a non-Jewish religious group and by the fact that only the United States, which is the sole provider of substantial financial support to Israel, is attacked by the Semitic Arabs and Muslims.

7. Whether, as told in oral argument to the United States Supreme Court in 1963 by the undersigned, individuals will eventually own nuclear devices and will over rule the courts unless there has been developed a scientific and mathematical methodology, wherein there is equal application of the law, and the development of this scientific methodology is the only hope for the preservation of society.

8. Whether the assertions in the complaint should be taken as true by this court under the Rule that the dismissal of the complaint must be based on the conclusion that even if those assertions therein must be assumed true in determining whether dismissal was proper.

9. Whether the political question doctrine has no application when the issue is an interpretation of the federal Constitution, and Plaintiff's life is threatened, as shown in the assertions on pages 7 and 8 of the complaint, and the fact that those Semities attacked under the anti-Semitic doctrine of Israel have caused far more American civilian deaths than military personnel deaths in the last decade. (Semitic includes Arabs and many other non-Jews before the revision of history in the post-1947 dictionaries.)

10. Whether the agreement that war would be only initiated by declaration of Congress, used to induce ratification of the U.S. Constitution, renders the ratification invalid unless the judiciary undertakes to enforce the agreement by declaring the breach of the agreement unconstitutional.

/s/ _____

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UNITED STATES COURT OF APPEALS
District of Columbia Circuit

James G. Mahorner, an individual and a member of the governed class, P.O. Box 50555 Jacksonville Beach, FL 3240 [sic]-0555, 904-249-0851

Plaintiff/Appellant,

vs.

George W. Bush, Jr., as President of the United States of America, and individually, 1600 Pennsylvania Ave. Washington, D.C. and **PAUL H. O'NEILL**, as Secretary of the Treasury of the United States of America, and individually,

Defendants/Appellees. /

September Term, 2002
District No. 1:02CV01530

Appeals Court File No. 02-5335

RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY AFFIRMANCE

Appellant, **JAMES G. MAHORNER**, *pro se,* respectfully responds to Appellee's Motion for Summary Affirmance and states:

1. Appellees' statement that Appellant seeks solely injunctive relief against the President unconstitutionally initiating war overlooks the right of the judiciary to interpret the Constitution and declare whether such action on the part of the President is unconstitutional and

omitting any injunction against it. Such declaration would be a substantial force in protecting the governed class from the great danger of nuclear or biological attack. Furthermore, the U.S. Supreme Court, in a case involving President Andrew Jackson, issued an order requiring Presidential action even though it was anticipated that the President would ignore the order. The judiciary are appointed for life so that they can comfortably protect the weak from the powerful without fear of retribution. There may have been a failure in this purpose when U.S. citizens who were Japanese and non-Japanese of slant eyes were placed in non-air conditioned concentration camps in the middle of the desert without fault. Certainly the intended mission of the judiciary, as recognized by life appointment, is better served if the court determines whether the power to initiate war in foreign countries lies solely in Congress and is undelegable. The fact that the governing class has so heavily pursued its own safety to the exclusion of the governed verifies that substantial danger has been created by the numerous actions of past and present Presidents in unilaterally initiating war. The action of Thomas Jefferson in refusing to initiate the War of 1812 and awaiting a declaration by Congress for many months while Britain continued to kidnap our seamen from our ships, demonstrates that those Presidents who remember the intent of the U.S. Constitution best, knew and practiced its intended limitations.

2. The pending irreparable harm is conclusively shown by the governing class spending billions of dollars of tax monies to finance the most sophisticated multiple shelters exclusively for the protection of the governing class, a fact known by the judiciary, as well as the top members of the other branches of government. Such fact is

easily proven through answers to interrogatories or by judicial notice.

3. It is arguably clear that should a client, who had publicly pushed the President down, or threatened him with such physical attack because of fear that the President's unilateral action in bombing the nuclear-biological power communist China (embassy), as a public demonstration to prevent the continuation of such action would be entitled to an instruction from the criminal court that the President's action was unconstitutional because the forefathers stated that the blood of the *populous* was not to be spilled by the whim of one, as permitted in England, but must be done by the judgment of the many Congressional representatives, and should the jury find that the unconstitutional action created a threat to the client's life, the jury must acquit. Clearly, under this hypothetical circumstance, the present issue is absolutely justiciable. Non-justiciable issues are those which are always non-justiciable, and clearly those threatened with grave injury do not have to wait the injury to present the issue to the court, any more than those threatened by future cancer because of present environmental factors have to wait for the occurrence of the cancer.

4. The claim of Appellee is not applicable to people in general but only applicable to the governed class who are to be excluded from the three very large fall-out shelters exclusively for the three branches of government, and which in numerous times of dangers past, have been used for the safety of members of the governing class and their cousins and other family members.

5. Appellant has a personal standing to prevent government action which has a possibility of establishing

one religion over another. Both The Vatican and Israel are sovereign theocracies. Both governments direct factors in this country which promote their religion at the expense of others. Thus, Catholics push for conversion before a U.S. Protestant marries a Catholic, and for agreement that the mutual children will be Catholic. Similarly, Israel automatically grants citizenship to those U.S. Protestants who convert to Judiasm. The First Amendment of the U.S. Constitution prohibits Congress enacting laws (appropriations) which tend to establish a particular religion or abridge the free exercise thereof, which dual prohibitions are equally breached by the appropriation to Israel.

6. Appellant has comparable standing to attack the financing of Judiasm by the federal government as has been given to the practitioners of Judiasm in this country who, under similar circumstances, attacked the financing of school prayer and the financing of religious icons by the federal government, and as they would have in attacking the financing of the Vatican (a judiarchy) contemporaneous with the termination of federal financing of Israel (a judiarchy).

7. Appellant cannot support the request for summary affirmance by Mr. Bush without suffering a possibility that such would block an opportunity for review, however, it is possible that the granting of the government request may hasten review, reduce expenses and work of both parties, and save lives by expediting resolution before the imminent threaten of harm occurs.

8. Attached hereto are copies of excerpts from the Harper and Rowe publication *The Genius of the People* by Charles L. Mee, Jr. Such was written in 1817 in such proximity to the enactment of the U.S. Constitution as to

give it great authority as to the original intent. Such specifically says on page 259: "The delegates could scarcely conceive where the power to commit the blood and treasure of the nation to war could be lodged except among the direct representatives of the people and of the states." UNDERSIGNED, SIMILAR TO THE DELEGATES, CAN SCARCELY CONCEIVE THAT HE, AS A NON-GOVERNMENT OFFICIAL, HAS NO STANDING TO SUPPORT THE CONSTITUTIONAL AMENDMENT ENACTED TO PROTECT HIM AND HIS LIFE FROM THE POWER OF GOVERNMENT. IT IS EQUALLY CLEAR THAT HIS POWER TO ENFORCE PEACEABLY THROUGH THE JUDICIARY RENDERS THE ISSUE JUSTICIABLE, AS OTHERWISE IT CAN ONLY BE ENFORCED BY THE POWER OF SELF DEFENSE, AS IS ACKNOWLEDGED IN *THE FEDERALISTS* (28). Of the sole power to initiate war, with no power to delegate such function, the major purpose of the Congressional power is to prevent the shredding [sic] of blood of the powerless by the action of one powerful individual. Appellant and others of the governed class are the only people that have standing to present this issue, as it has already been held that a portion of Congress does not have standing. In the last ten years, many more non-combatant citizens of this country have been killed by hatred from foreign groups whose countries have been attacked solely as a result of the whim of the U.S. President than military combatants who are paid to endanger their lives. The judiciary is the only branch of government which enjoys lifetime appointments, the major purpose being to protect the powerless from unconstitutional exercises of power by the governing class. In full a holding that the sole group intended to be protected by a Constitutional provision has

no standing to request such protection is neither countenanced by fair play principles of justice or logic.

Dated this 18th of December, 2002.

/s/ _____

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[The "Genius of the People" attached as an exhibit is reproduced at pages F1 to F4.]